

# IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

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## COMPLETE TITLE OF CASE

KRETSINGER REAL ESTATE COMPANY and AMERICAN CENTRAL TRANSPORT,  
INC.,

Appellants,

v.

AMERISURE INSURANCE COMPANY,

Respondent.

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**DOCKET NUMBER WD78791**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** June 21, 2016

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## APPEAL FROM

The Circuit Court of Clay County, Missouri  
The Honorable Janet Sutton, Judge

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## JUDGES

Division IV: Ahuja, C.J., Pfeiffer, J., and Youngs, Sp. J.

CONCURRING.

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## ATTORNEYS

Michael D. Hufft and Patrick E. White  
Kansas City, MO

Attorneys for Appellants,

Martin J. Buckley and Elaine M. Moss  
St. Louis, MO

Attorneys for Respondent.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

KRETSINGER REAL ESTATE	)	
COMPANY and AMERICAN CENTRAL	)	
TRANSPORT, INC.,	)	
	)	
Appellants,	)	OPINION FILED:
v.	)	June 21, 2016
	)	
AMERISURE INSURANCE COMPANY,	)	
	)	
Respondent.	)	

WD78791

Clay County

**Before Division IV Judges:** Alok Ahuja, Chief Judge, Mark D. Pfeiffer, Judge, and J. Dale Youngs, Special Judge

Kretsinger Real Estate Company (“Kretsinger”) and American Central Transport, Inc. (“ACT”) (collectively, “Judgment Creditors”) appeal from the Judgment of the Circuit Court of Clay County, Missouri (“trial court”), after a bench trial, in favor of Amerisure Insurance Company (“Amerisure”) on the Judgment Creditors’ equitable garnishment claim.

Kretsinger and ACT hired Triad Construction, Inc. (“Triad”) to construct a parking lot in accordance with certain pavement specifications. Triad subcontracted with City Cement Construction Company to supply labor and materials. City Cement purchased the concrete used to construct the parking lot from Fordyce Concrete. City Cement completed construction of the parking lot in February 2007. Kretsinger and ACT commenced using the parking lot for tractors and trailers in March 2007. In May 2008, Kretsinger and ACT became aware that the parking lot was beginning to crumble, crack, and deteriorate. Kretsinger and ACT filed suit against Triad and City Cement.

A bench trial was conducted, and the court concluded that Triad breached its contract with Kretsinger and ACT to furnish all required labor, material, and equipment necessary to provide a parking lot in accordance with pavement specifications. In accordance with the opinion of Kretsinger and ACT’s expert, the court found that the concrete that City Cement purchased from Fordyce Concrete was defective at the time it was purchased and installed; the

deterioration of the concrete was not repairable; and the only viable option for correction was removal and replacement of the concrete. The court found that the damages were liquidated and awarded Kretsinger and ACT prejudgment interest from March 1, 2007, the date City Cement finished installing the defective concrete, until the date of judgment, December 30, 2013 (“Underlying Judgment”).

Thereafter, Judgment Creditors filed a petition for equitable garnishment against Triad and its commercial general liability (“CGL”) insurer, Amerisure Insurance Company (“Amerisure”). The trial court entered judgment in favor of Amerisure and against Judgment Creditors. Judgment Creditors timely appealed, challenging the trial court’s judgment that the Judgment Creditors failed to offer substantial evidence of “property damage” within any Amerisure policy period; that coverage under CGL insurance policies was triggered when the “injury-in-fact” occurred, and Judgment Creditors’ damages were fixed as of March 1, 2007, when the parking lot was put to its intended use and immediately began to deteriorate because the only remedy for that damage was complete removal and repair of the parking lot.

**AFFIRMED.**

**Division IV holds:**

Amerisure’s CGL policies provide that all loss “shall be deemed to occur at the time of the physical injury that caused it.” Judgment Creditors were injured in fact on March 1, 2007, the date City Cement finished installing the defective concrete. Because coverage under Amerisure’s policies did not commence until August 1, 2007, the trial court correctly concluded that there was no “property damage” within any Amerisure policy period.

**Opinion by: Mark D. Pfeiffer, Judge**

June 21, 2016

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.